

B. B. Smith
JOURNALS *Red River*

OF THE

J. H. Hallam

HOUSE OF REPRESENTATIVES

OF THE

THIS BOOK
FOR CIRCULATION

STATE OF TEXAS.

SECOND LEGISLATURE.

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1846.

Mr. Robertson moved that Mr. Rayner be added to the select committee appointed to ascertain the amount of the outstanding liabilities of the late Republic of Texas.

His Excellency, the Lieut. Governor, and the members of the Senate, were announced at the bar of the House.

His Excellency, the Lieut. Governor, was invited to a seat on the right of the Chair; and the Senators to seats prepared for them.

The following message of His Excellency, the Governor, was then read by the Chief Clerk of the House of Representatives, to the two Houses of the Legislature.

Executive Office,
Austin, December 29, 1847.

*Gentlemen of the Senate,
and of the House of Representatives :*

The message of my predecessor, communicated to the Legislature at the commencement of the session, gave you all the necessary information in relation to the present condition of the Government, and of its administration since your last convention. It only remains for me to recommend to your consideration such measures, and the adoption of such a course of policy as may seem expedient for our future governance and prosperity.

The present position of our affairs affords ample room for congratulation. At no period in the history of our country have we had more cause to rejoice on account of her prosperous condition. Our State Government, founded on the will and affections of the people is daily growing in strength. Local jealousies and sectional prejudices, if they ever existed, have given place to the better feelings of patriotism and habits of industry, and subordination to the laws, prevail throughout the length and breadth of the State. Security at home, and the peacefully enjoyment of the blessings of liberal institutions, have given a new impulse to our advancement in prosperity, happiness, and the science of government. The past session has been one of general good health, and Providence has

blessed the country with an abundant harvest. For all of which, we owe to the Supreme Being our sincere gratitude.

Meeting together under circumstances so auspicious, it becomes our duty to unite in harmonious action, for the continuance and promotion of the prosperity and happiness of our common constituents.

Among the many important matters which will come up for your consideration, there is none more urgent and difficult of adjustment than that of the payment of our public debt. The first point in relation thereto is the determination of its amount: the next is the means of its payment. The subject is intricate and perplexing, and will require close investigation. Should the Legislature think proper to act upon it, with a view to its adjustment, I would respectfully suggest the propriety of appointing a commission of two or three gentlemen of integrity and ability, to examine, audit and ascertain our true indebtedness, including of course, our foreign and domestic debt, funded and unfunded, audited and unaudited, allowing such as they may find to be just and legal, subject however to the ratification or rejection of the Legislature. As to the amount we ought justly to pay, upon each nominal species of debt, it will be for your collective wisdom to determine. After much reflection upon the subject, I have thought that the true measure of payment would be the market value of the several evidences of indebtedness at the time they were disposed of by our Treasury or the agent thereof, with interest thereon from that time, at the rate named on the face of such evidences. It is believed that the amount of our entire indebtedness, determined by this scale, will not perhaps exceed five millions of dollars.

As to our means of payment—our large and valuable public domain is the only ready resource we have. This too, presents a still more important subject for your deliberations, as you will have to determine upon some course of policy to be pursued in bringing this immense tract of country into market. At a fair price, it is not only sufficient to liquidate our debt, but will give us a surplus after its payment, of inestimable value when applied, as it should be the education of the youth of our country, and the development of our resources, by internal improvements.

The most suitable and proper purchaser of our public lands is the United States. If a sale can be effected on advantageous terms, it will, under the present circumstances, be desirable,

inasmuch as the Federal Constitution gives her alone the exclusive right of regulating our intercourse with the Indian tribes. She would then be the owner of the soil occupied by the various tribes upon our borders, and could the more effectually control them. In addition to this, her uniform manner of surveying and selling her public lands would greatly facilitate settlements within our State.

If in your wisdom you determine to propose a sale of our public domain to the General Government, I would respectfully suggest that you appoint our delegation in Congress; or some other suitable persons as Commissioners, to enter into negotiations with the proper authorities, upon this important subject. If however, you determine upon another course of policy as being better calculated to promote the interest of the State, you have the assurances of the hearty sanction and co-operation of the Executive in whatever you may legally and constitutionally do.

Our debt must be paid. The honor of the State must stand without blemish. We never can expect to attain a high and permanent prosperity until it is done, and the consummation of a purpose so noble, calls for united and energetic action. I would here take occasion to call the attention of your honorable body to a subject which has of late occupied much of the public mind—a subject involving in its issue interests of the greatest moment to the people of Texas. I allude to the efforts that have been made, and are now making to sustain certain land claims, supposed to be fraudulent. It is a notorious fact, that the country is flooded with these claims, and if they should hold good, and the perpetrators of such frauds succeed in their designs, it were useless longer to consider as to the disposition of our public domain, as in that event the whole will be appropriated and absorbed by them. The evil will not stop here. The State will not be the only sufferer. The vested rights of our oldest and best citizens will be disturbed and endangered. Our land titles will be clouded, emigrants will be prevented from purchasing, the settlement and improvement of our country will be retarded, and an amount of confusion and litigation unparalleled in the history of our sister States will necessarily ensue. The question arises—is there no remedy by which these evils can be arrested? Will the State submit to the imposition of a fraud so general in its character, and so pernicious in its consequences? It seems to me that some further legislative pro-

visions are indispensable to the security of the public interest. I would therefore recommend that your honorable body adopt such measures as will effectually enable the judicial tribunals of the State to prevent the consummation of titles to land acquired by virtue of fraudulent certificates, and that precautionary means be taken to prevent the survey of the public lands on spurious and fictitious claims.

It will become your duty under the 29th and 31st sections of the third article of the Constitution, to fix the number of Senators and Representatives to the Legislature, and to apportion them among the several counties and districts of the State, according to the number of our free population, as ascertained and reported by the county assessors, in pursuance of the law by the last session of the Legislature.

It will also be necessary for you, under the same sections of the Constitution, to enact a law for a similar enumeration in the year eighteen hundred and forty-eight.

Our last Legislature passed an act to establish a State Penitentiary. This law provides for the erection of the buildings by the convicts, and is of course inoperative for want of a penal code applicable to such mode of punishment. It will, therefore, become your duty to adopt a code for the punishment of all offences not capital, and above the grade of misdemeanor, by confinement to labor in the Penitentiary of the State. With the lights before us, and the experience of other States in regard to the mode of punishment, you cannot fail to digest a code of criminal laws which will not only supersede the savage practice of the whipping post, but will deter the wicked among us from violating the rights of others. So soon as this necessary code is adopted, the Executive will cheerfully proceed to execute the provisions of the act of 1846.

The 15th section of the fourth article of our Constitution having given to the District Courts "Original jurisdiction and control over executors, administrators, guardians and minors, under such regulations as may be prescribed by law," the last Legislature, without prescribing these regulations, proceeded to give to the Probate Courts ample powers over the same subjects. By this means some confusion has arisen in the interpretation of our successive laws. Some legislative provisions will, therefore, be necessary to regulate this jurisdiction. I bring this matter more readily before you because it will be admitted by all, that no branch of our civil jurisprudence is of

more practical importance than the laws regulating the safe keeping of the estates of minors and deceased persons. And perhaps it may be said, with equal truth, that no part of our laws are more imperfect.

The 36th section of the seventh article of the Constitution, provides that, within five years after its adoption, the laws, civil and criminal, shall be revised, digested, arranged and published in such manner as the Legislature shall direct. To carry out this excellent provision of the fundamental law, I would recommend the appointment of legal gentlemen, to revise, digest and arrange our entire code of laws. The work is greatly needed by our county officers throughout the State. Many of them are without the statutes: and those who have them, find in them such entire absence of arrangement, that they are to them a sealed book. To engage the services of men learned in the law, and to have the work well done, a suitable compensation should be allowed them by law, and provision should be made for publishing the code so soon as it is revised.

I would further recommend to the Legislature the propriety of having published the decisions of the Supreme Court of the State. During the last two years, important principles have been adjudicated by that tribunal, involving interest of great magnitude, and explanatory of our statutes and defining our legal and social rights. These decisions have not as yet been published in any authentic form, and as it is important and desirable that they should be correctly printed and generally disseminated, the necessary appropriation should be made.

By the 10th article of the Constitution, it is made the duty of the Legislature to make suitable provision for the support and maintenance of public schools. Your body is further required, as early as practicable to establish free schools throughout the State. One tenth of the annual revenue derived from taxation is set apart as a perpetual public free-school fund. In addition to this general fund, the land granted to the various counties for school purposes are made a perpetual fund; and those counties, which have not as yet received their quantum of school lands, shall be entitled thereto.

The Congress of the late Republic of Texas by an act approved 26th January, 1839, directed to be surveyed and set apart for each county, for the purpose of establishing a primary school or academy in each county, three leagues of land.

By the same act fifty leagues of land were directed to be surveyed and set apart for the endowment of two colleges or universities.

By another act approved 5th February, 1840, the Chief Justice and two associate Justices of each county were appointed a board of School Commissioners, with power to have located and surveyed the three leagues above referred to, and the additional power of surveying and selling an additional league of land; the one-half of the proceeds of such sale to be applied to the endowment of the county academy, and the remainder to be distributed to the county school districts.

This is the whole of our imperfect legislation, on the great and vital subject of Education.

It is almost impossible to tell what the old counties have done upon the subject of surveying and selling school lands. To obtain the necessary information in relation to the matter, we need some legal provision requiring the county clerks, assessors or chief justices to report what has been done in their respective counties. It is believed, however, that few of the counties have had the land surveyed.

The system of leasing or renting school lands has never worked well in any of the states. Experience has universally proved the expediency of selling such lands and bringing the monies into a general school fund.

To begin however, in this great work, it will be necessary that we should know, what lands have been set apart by the counties where they are situated; and that we proceed under constitutional requirements to have set apart the deficient lands. I therefore recommend that you make provision on this subject at as early a day as practicable.

It will also be for your body to say what disposition shall be made of the tenth of the revenue now in the Treasury, and annually coming in as a permanent school fund.

The license and revenue laws passed by the last Legislature, have in their practical operation produced some confusion and dissatisfaction among our citizens. It will be for you to consider whether they cannot be revised and modified in such a manner as to be more uniform and less objectionable to the tax-paying community.

In connection with this subject I would suggest the propriety of having the assessment roll of non-resident tax payers published at a point, as near as possible to the location of the

property assessed. This would certainly present the readiest means of giving information to the owners.

For the more speedy and certain collection of State and county revenue, I would recommend that a law be passed, authorizing a judgment to be taken by motion against any officer and his securities on their bond, for a failure to pay over the public monies by him collected.

The last Congress made an appropriation for the erection of two light houses upon our coast. One to stand upon Galveston and the other upon Matagorda Island. Before the works can progress it will be necessary that the Legislature pass a law, ceding to the General Government the right of jurisdiction over the grounds appropriated to such purposes. I herewith transmit to you a communication from the collector of the port of Galveston, upon this subject. The communication contains some other suggestions in relation to the transfer of our "Custom Houses and other places for the collection of import duties." It is respectfully submitted to your consideration.

In addition to our population speaking the English language, we have a large, industrious and growing German population. It will be necessary in order that they may participate fully in the blessings of our free Government that a certain number of copies of our statutes of a general nature, should be printed in their language. As they must abide by our laws, let them know what they are. Such has been our custom in regard to our citizens speaking the Spanish language. The reasons are still more potent in regard to the enterprising and patriotic German who has come to make his home in our country, and who has already given us a pledge of his worth in the spirit of improvement which he has kindled in the western portion of our State.

I cannot close this communication without congratulating you upon the success of our arms in Mexico, and also expressing a sincere desire that the infatuated people of that unhappy country will see the necessity of accepting the honorable and liberal terms of conciliation offered them by the United States.

But while the administration of the Federal Government has covered itself with glory in the conduct of the war every patriotic spirit is made to tremble with anxiety for the peace of

the Union, because of the late and fearful combination in the North against the institutions of the Southern States.

The object is to rally in the National Congress, a majority favorable to the destruction of the compromises of 1819, and of the Federal Constitution.

I sincerely hope that you will not adjourn without publicly expressing a strong and pointed condemnation of these startling doctrines.

In conclusion, gentlemen, I recommend to you a just economy in the public expenditures, and a mutual concession of opinions for the purposes of harmony and the despatch of public business. And I promise you the use of my sincere, and best endeavors to co-operate with you in carrying out every legal and constitutional measure that will advance the interest of our beloved country.

GEO. T. WOOD.

The message having been read, the Senate returned to their Chamber.

Mr. Willie introduced the following resolution.

Resolved, That the committee on Printing be instructed to contract for the printing of one thousand copies of the message of his Excellency the Governor, in pamphlet form for the use of this House."

Mr. Lott moved to amend the Resolution by striking out "one" before "thousand" and inserting "two."

Mr. Allen moved to lay the resolution upon the table.

Motion lost.

Question—Shall the amendment proposed by Mr. Lott, to Mr. Willie's resolution be adopted.

The yeas and nays were called on the adoption of the amendment and stood as follows.

Yeas—Messrs. Speaker, Armstrong, Bogart, Bourland, Davis of R., Dooley, Eddy, Fields, Goode, Hardiman, Haynie, Irion, Lamar, Lewis, Lott, Lyons, Miller of C., Milican, McCown, McNeill, Rains, Reagan, Robertson, Rodgers, Shan-